IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.69 of 1994

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
BOMBAY GUJARAT ART SILK VEPARI MAHAJAN CO.OP.SHOPS & WAR.SOC. - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
MR JP SHAH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 22/09/2005
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. The following two questions have been referred, at the instance of the Commissioner of Income-tax, by the Income-tax Appellate Tribunal, Ahmedabad Bench 'B', under Section 256(1) of the Income-tax Act, 1961 (the Act):

    1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the activity of the assessee co-operative society was business activities ?

    2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the income of the co-operative society should be taxed under the head 'business income' and not under the head 'income from house property' or 'income from other sources' ?

2. The Assessment Years are 1977-78 to 1982-83. The relevant accounting periods are the years ended on 30th June, 1976 to 30th June, 1981 respectively. The assessee, a registered Co-operative Society, owns a building complex consisting mainly of shops and godowns. Its claim to treat the income arising therefrom as business income was negatived by the Assessing

Officer. The assessee succeeded before the Commissioner (Appeals) and the Tribunal. The Tribunal has not given any independent reasons except for following its earlier decision rendered in the case of Surat Textile Market Co-operative Shops and Warehouse Society Ltd. by referring that the facts of the asseesse's case and the facts found in the case of Surat Textile Market Co-operative Shops and Warehouse Society Ltd. are similar. The present reference has been made because in case of Surat Textile Market Co-operative Shops and Warehouse Society Ltd. reference had been made under Section 256(2) of the Act.

3. The case of Surat Textile Market Co-operative Shops and Warehouse Society Ltd. has since been decided by this Court and the judgment is reported in [2003] 264 ITR 289 (Guj). In the circumstances, applying the ratio of the aforesaid decision, both the questions are answered in the affirmative i.e. in favour of the assessee and against the Revenue.

4. In the case of Surat Textile Market Co-operative Shops and Warehouse Society Ltd. income from shops and godowns allotted to members by way of nominal rent has been held to be income from other sources. Similarly, income from the restaurant and residential hotel have been treated as income from house property. In the facts of the present case, the break up of the income is not available. In the circumstances, the Tribunal while disposing of the appeal shall adjust its decision in accordance with the judgment of this Court in the case of Commissioner of Income-tax Vs. Surat Textile Market Co-operative Shops and Warehouse Society Ltd. (supra) after recording the details of the income derived by the assessee.

5. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/- Sd/-
[D.A. MEHTA, J] [H.N. DEVANI, J]

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*Bhavesh**